

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ABERLINE SMITH and DEPARTMENT OF THE AIR FORCE,  
ROBINS AIR FORCE BASE, Ga.

*Docket No. 96-1699; Submitted on the Record;  
Issued June 4, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that her back condition was causally related to her April 18, 1995 employment injury; and (2) whether appellant sustained disability for work during the period June 12 through August 7, 1995 as a result of her accepted employment injury.

On April 24, 1995 appellant, then a 46-year-old secretary/office automation, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured her right knee and lower back when she fell delivering a classified package needed at a conference. The claim was accepted for contusion right knee and broken teeth.<sup>1</sup> Appellant returned to work on limited duty on April 24 to April 28, 1995 and to full duty on June 12, 1995.

The record contains treatment notes dated April 18 through June 8, 1995 from Dr. John R. Arnall, appellant's treating Board-certified family physician.<sup>2</sup> Dr. Arnall diagnosed contusion to right knee and noted appellant's complaints of back pain on April 18, 1995. In subsequent visits, he notes appellant complaining of back pain. Dr. Arnall put appellant on limited-duty status working four hours per day with no lifting or bending and no prolonged standing or sitting.

On May 19, 1995 the Office authorized appellant to see Dr. Gary L. Hattaway, a Board-certified orthopedic surgeon, for a second opinion as to whether appellant's back condition was due to factors of her employment.

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<sup>1</sup> In an undated note received by the Office of Workers' Compensation Programs on October 3, 1995, appellant alleged that she broke two teeth in the employment incident of April 18, 1995. The Office approved repair to appellant's teeth on November 14, 1995.

<sup>2</sup> Dr. Arnall is employed by the employing establishment.

By report dated May 23, 1995, Dr. B. Lamar Pilcher, a Board-certified radiologist, based upon appellant's history and a magnetic resonance imaging (MRI) scan, diagnosed severe degenerative disc disease with hypertrophic spurs at L4-5 and mild degenerative disc disease at L5-S1.

In an office note dated June 2, 1995, Dr. Hattaway diagnosed severe degenerative lumbar disc disease. Dr. Hattaway wrote that he had seen appellant "on several occasions" dating back to 1991 when she was involved in an automobile accident for significant degenerative lumbar disc disease. Dr. Hattaway noted her employment injury of April 18, 1995 as well as her complaints of ache and soreness in the back. He then stated that appellant:

"Has had continued ache and soreness in her low back. She has difficulty sitting and bending which are similar to symptoms she has had in the past. She recently had an MRI scan which again revealed significant degenerative disc disease at L4-5 but no herniation. She is still quite overweight."

On August 7, 1995 appellant filed a claim for wage loss for the period June 12 through August 7, 1995. With this application she submitted an itemization of the sick leave she used which she attributed to her job-related disability.

By letter dated October 2, 1995, the Office advised appellant to submit additional medical documentation to support the time claimed.

By decision dated November 22, 1995, the Office denied appellant's claim that her lumbar problems were related to her April 18, 1995 employment injury. The Office found that the medical evidence established that appellant has been under treatment since 1991 for severe degenerative disc disease and there is no medical opinion relating her employment to her current back complaints.

By decision dated November 27, 1995, the Office rejected appellant's claim for wage loss on the grounds that the medical evidence did not establish disability for the period claimed as a result of the accepted right knee contusion and two broken teeth.

The Board finds that appellant has failed to meet her burden of proof in establishing that her back condition was causally related to the injury of April 18, 1995 or factors of employment

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> Causal relationship must be shown by rationalized medical evidence of causal relation based upon a

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>7</sup> The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>8</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused or aggravated her condition is sufficient to establish causal relationship.<sup>9</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,<sup>10</sup> neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>11</sup>

Appellant has the burden of establishing that her claimed back injury was caused by the alleged April 18, 1995 incident or other factors of her federal employment. The Office found that appellant did not establish a causal connection between her back injury and the accepted employment injury.

Appellant has failed to submit medical evidence supportive of her claim that her preexisting back condition was aggravated by the accepted employment injury of April 18, 1995. None of the medical reports in the record state that appellant's back condition was caused or aggravated by the April 18, 1995 injury. Dr. Arnall, in his treatment notes, diagnosed contusion to the right knee and noted appellant's complaints of back pain on April 18, 1995. Both Drs. Hattaway and Pilcher diagnosed degenerative disc disease. Dr. Hattaway also noted that appellant was overweight and that he had treated appellant for degenerative lumbar disc disease dating back to appellant's automobile accident in 1991. Dr. Hattaway noted appellant's

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<sup>5</sup> *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983)

<sup>6</sup> *Id.* The Office's regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of incidents within a single workday or work shift whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. § 10.5(a)(15), (16).

<sup>7</sup> *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

<sup>8</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>9</sup> *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>10</sup> *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

<sup>11</sup> *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

employment injury of April 18, 1995, but gave no opinion as to whether her current complaints were causally related to the injury. None of the reports by Drs. Arnall, Hattaway or Pilcher address the cause of appellant's back complaints nor do they address whether it was causally related to or aggravated by the April 18, 1995 employment injury. The reports of Drs. Arnall, Hattaway and Pilcher are, therefore, insufficient to meet appellant's burden of proof as she failed to submit rationalized medical opinion evidence to establish that her back condition was employment related.<sup>12</sup> The Office properly denied her claim because she failed to meet her burden of proof to establish that her degenerative disc disease was caused or aggravated by her employment injury or factors of employment.

Consequently, appellant has failed to meet her burden of proof, as she submitted insufficient evidence indicating that her April 18, 1995 employment injury or other factors of her federal employment caused or aggravated her preexisting degenerative disc disease.

The Board also finds that appellant has not met her burden of proof to establish that she sustained disability for work from June 12 through August 7, 1995 as a result of her accepted employment injury. There are two reasons appellant is not entitled to monetary compensation for the period claimed.

The Act provides that an employee who uses sick or annual leave may not receive compensation for any period covered by such leave.<sup>13</sup> An employee may, with the concurrence of the employing establishment, buy back sick or annual leave and thereby create a period of wage loss for which he may claim compensation, but the decision to allow such a buy back rests with the employing establishment, not with the Office or the Board. The Office's procedure manual provides:

"When an employee is injured and elects to use sick or annual leave during the period of disability, the employee may at a later date, with the concurrence of the employing establishment, claim compensation for the period of disability and buy back the leave used. This procedure was reviewed by the Comptroller General in 1953 and considered permissible. The determining factor is whether the employing agency is willing and able to change the leave records from leave with pay to leave without pay."<sup>14</sup>

The Act does not govern whether a claimant may or may not buy back leave from an employing establishment, and any decision by the employing establishment to disallow leave buy back is not a decision of the Office over which the Board may exercise jurisdiction.<sup>15</sup>

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<sup>12</sup> See *James Mack*, 43 ECAB 321 (1991).

<sup>13</sup> *Joseph E. Salmons*, 34 ECAB 435 (1982) (citing 5 U.S.C. § 8118(c)).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900.13(a) (January 1991).

<sup>15</sup> See 20 C.F.R. § 501.2(c) (defining the Board's jurisdiction).

In this case, appellant utilized her sick leave to prevent wage loss during the period claimed, and there is no evidence in the record that the employing establishment has allowed her to buy back this leave to create a period of leave without pay. Therefore, appellant may not receive monetary compensation for the period claimed.

Moreover, the medical evidence of record fails to establish that appellant's wage loss was a result of her accepted employment injury.

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>16</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>17</sup>

The Office accepted that appellant sustained an injury in the performance of duty. Not every employment injury, however, prevents an employee from performing the duties of his or her position.<sup>18</sup> It remains appellant's burden to establish that her accepted disability prevented her from performing the duties of her position during the period for which compensation is claimed. As part of her burden, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.<sup>19</sup>

Because appellant has not submitted a well-reasoned narrative medical opinion explaining how the employment-related disability prevented her from performing the duties of her position during the period June 12 through August 7, 1995, she has not met her burden of proof.

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<sup>16</sup> See *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph W. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>17</sup> *Elaine Pendleton*, *supra* note 4.

<sup>18</sup> See *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that this condition prevented him from returning to his work as a chemist or that it caused any incapacity to earn the wages he was receiving at the time of injury).

<sup>19</sup> *Tracey Smith-Cashen*, 38 ECAB 568, 571-73 (1987).

The decisions of the Office of Workers' Compensation Programs dated November 27 and 22, 1995 are hereby affirmed.

Dated, Washington, D.C.  
June 4, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member